

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for authority to) DOCKET NO. 910082-WS
gross up contributions-in-aid-of) ORDER NO. 24285
construction (CIAC) in Bay County) ISSUED: 3/25/91
by GULF WATER AND DISPOSAL COMPANY)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
GERALD L. GUNTER
J. TERRY DEASON
MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER ON CIAC GROSS-UP

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature, and as such, will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Gulf Water & Disposal Company (GW&D) is a Class C water and wastewater utility providing service to the public in Bay County. Historically, GW&D has served a single residential community, Derby Woods, in Bay County. In 1990, Mill Bayou Development Company (MBDC) commenced development of a new community, Mill Bayou, which adjoins Derby Woods and which is also within the certificated service area of GW&D. Mill Bayou will be developed in phases over the next several years. On July 23, 1990, GW&D entered into a Developer's Agreement with MBDC for the first phase of Mill Bayou, whereby MBDC agreed to convey to GW&D, as CIAC, legal title to the water system installed by MBDC to provide water service to and within the development. As of June 30, 1990, GW&D had 267 water and 251 wastewater service customers. Water customer growth during the buildout of Mill Bayou is expected to result in total water customers of 284 at June 30, 1991; 299 at June 30, 1992; and 319 at June 30, 1993. After 1993, the continued buildout of Mill Bayou is expected to add approximately 20 additional water customers per year. A review of the utility's 1989 Annual Report reflected 261 water and 210 wastewater customers as of December 31, 1989. Gross

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annual operating revenues of \$42,551 and \$24,349 were reflected for the water and wastewater systems, respectively, and the utility had net operating income of \$1,920 for the water system and \$5,907 for the wastewater system.

On January 23, 1991, pursuant to Rule 25-22.036, Florida Administrative Code and Commission Order No. 23541, Gulf Water and Disposal Company filed its petition for authority to gross-up contributions-in-aid-of-construction (CIAC). GW&D does not currently have a CIAC gross-up tariff in effect. The utility asserts that this request is necessary because GW&D will have an actual 1991 tax liability due to the conveyance of property contributions of approximately \$80,000 from Mill Bayou Development Company on April 1, 1991, and that due to the large dollar amount of the CIAC, and the fact that it will consist of property and not cash, GW&D finds itself without the resources to pay the tax liability resulting from the receipt of the CIAC.

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact on CIAC resulting from the amendment of Section 118(b) of the Internal Revenue Code. Order No. 23541, issued October 1, 1990, ordered that no utility may gross-up CIAC without first obtaining Commission approval.

Section 367.091(5), Florida Statutes, provides that within sixty (60) days of the filing of an application to change a rate or charge the Commission may approve, withhold consent, or allow upon inaction, the rates requested to become effective. The file-and-suspend statutes have been interpreted by the Florida Supreme Court in Citizens of the State of Florida vs Wilson, 568 So.2d 904 (Fla. 1990), to provide that rates which become effective upon inaction by the Commission are merely interim rates pending final order by the Commission. The case law also provides that substantially interested persons have the right to a hearing on the interim rates.

We have considered the data which has been submitted and find that the utility has filed the minimum information required by Order No. 23541. Although the information filed makes it appear that the utility will have a tax liability as a result of the conveyance of the CIAC, we find that it is reasonable and necessary to require amplification and explanation of the data filed, as well

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as additional and corroborative data, before we can make a final determination that a tax liability exists and that other sources of funds are not available at a reasonable cost.

In consideration of the above, we are not suspending rates or withholding consent. By our inaction on the file-and-suspend provision of Section 367.091(5), Florida Statutes, it is our intent to allow the new tariffs to become effective on an interim basis.

Pursuant to Orders Nos. 16971 and 23541, CIAC tax impact amounts are to be deposited as received in a fully funded interest bearing escrow account. However, because this gross-up is being allowed on an interim basis and may not be permitted after further examination, no monies shall be withdrawn from the escrow account until a final determination is made in this matter. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund.

In the event that CIAC gross-up is permitted after a final determination, all CIAC tax impact monies received during the tax year that are in excess of the utility's actual tax liability resulting from its collection of CIAC, together with interest on such excess monies, must be refunded on a pro rata basis to the contributions of those amounts. Further, all provisions of Orders Nos. 16971 and 23541 not addressed in this Order are incorporated herein by reference.

The tariffs proposed by GW&D in its application will become effective, but not final, after March 24, 1991. However, substantially affected persons shall have 21 days from the date of this order to request a hearing.

It is, therefore,

ORDERED by the Florida Public Service Commission that the tariffs filed by Gulf Water and Disposal Company for CIAC gross-up are neither approved, suspended nor denied. It is further

ORDERED that the tariffs filed by Gulf Water and Disposal Company shall become effective, but not final, after March 24, 1991. It is further

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ORDERED that Gulf Water and Disposal Company shall be allowed to collect gross-up contributions-in-aid-of-construction on an interim basis subject to refund and in accordance with the provisions of Rule 25-30.360, Florida Administrative Code. It is further

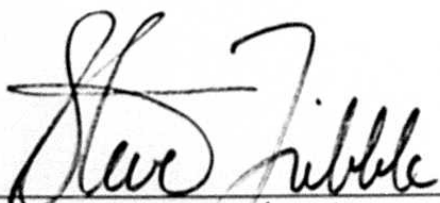
ORDERED that Gulf Water and Disposal Company shall deposit all gross-up contributions-in-aid-of-construction collected into a fully funded interest bearing escrow account. It is further

ORDERED that Gulf Water and Disposal Company shall make no withdrawals from the escrow account until a final determination to approve or deny the new tariffs is made in this matter. It is further

ORDERED that the provisions of this Order issued as proposed agency action shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that this docket shall remain open for further proceedings.

By ORDER of the Florida Public Service Commission this 25th
day of MARCH, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 15, 1991.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.